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NO. 14

IN THE
Supreme Court of the United States

OCTOBER TERM, 1944

R. J. THOMAS,

Appellant

v.

H. W. COLLINS, SHERIFF
OF TRAVIS COUNTY, TEXAS,

Appellee

REPLY TO BRIEF OF THE UNITED STATES
AS AMICUS CURIAE

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*To the Honorable The Supreme Court of the United
States:*

So much time has now elapsed since the original presentation and the reargument in this case that we desire to remind the Court of certain points

which were brought out only in oral argument. We did not file a written reply to the *amicus curiae* briefs for the reason that they do not, in our opinion, present anything new but the brief filed for the United States contains certain inaccuracies as to the record.

At the bottom of page 5 and top of page 6 of the brief for the United States appears this sentence: "Appellant, having been remanded to the custody of the Sheriff of Travis County, Texas, after sentence, filed a petition for a writ of habeas corpus in the Supreme Court of Texas (R. 312-314) alleging, as he had in the trial court (R. 66-67, 304-308), that the statute was unconstitutional because, *inter alia*, it was in conflict with the provisions of the National Labor Relations Act (Appellant's brief before the Supreme Court of Texas, pp. 45-46)."

The appellant did not allege in the trial court or in his petition for writ of habeas corpus in the Supreme Court of Texas that the statute in controversy was in conflict with the provisions of the National Labor Relations Act. The amended application for writ of habeas corpus appears in the record on pages 312 to 314 and it includes no such allegation. The original application for writ of habeas corpus, which was not printed, contained no such allegation. The answer to the complaint filed by appellant in the trial court which appears on pages 304 to 308 contains no such allegation. The pleading referred to by appellant as appearing on

pages 66 to 67 of the record was a pleading in another case in another court, and it was introduced in the trial court as evidence and not as a part of the pleadings in the hearing on the contempt charge. R. 48. This pleading in Cause No. 68729 in the 98th District Court of Travis County, Texas, was a suit for declaratory judgment brought by the Labor Unions and union officials against certain State officials for the purpose of having the entire Texas Labor Regulatory Act construed and its validity determined. It was introduced in the contempt hearing for the purpose of negating appellant's contention that it was necessary for him to violate the temporary restraining order issued against him in order to secure a test of the constitutionality of Section 5 of the Texas Labor Regulatory Act. This pleading in this other case showed on its face that Section 5 of the Act was already before another District Court in another case in which Appellant Thomas was a party plaintiff.

At the top of page 8 of the brief for the United States appears this statement: "The Court further held that although the statute dealt with a subject covered by the National Labor Relations Act, it was not superseded thereby."

This statement is also incorrect. The Supreme Court of Texas did not hold that Section 5 of the Texas Act "dealt with a subject covered by the National Labor Relations Act." In writing on the subject in a comprehensive manner the court did

refer to the principle that "the fact that the Federal Government has legislated on the subject under the commerce clause does not exclude the right of the State to legislate on the same subject under its police power" but there was nothing in the application for writ of habeas corpus to the Supreme Court of Texas which raised the issue of conflict between Section 5 of the Texas Act and the National Labor Relations Act and no such contention was made in oral argument before the Supreme Court of Texas. The first time that the question of conflict between Section 5 of the Texas Act and the National Labor Relations Act has been made by appellant in his pleading or specifications of error was Paragraph No. 16 of appellant's motion for rehearing in the Supreme Court of Texas. R. 335. The appellant did not brief this point in either of his briefs filed in this court, and it was first raised in this court on the court's own motion in the order entered at the last term in Cause No. 569.

We further pointed out in oral argument that the Government's contention as to "anonymity" and "timeliness" on which it predicates its argument as to conflict has no application to the facts of this case. The appellant as a voluntary witness on his own behalf in the trial court stated without contradiction that he knew "about six weeks ago" that he was coming to Texas to solicit members for the Oil Workers Union (R. p. 33) and appellant's own evidence shows that he was advertised as the featured speaker on the program which was distributed

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prior to the Oil Workers Victory Rally at Peily, City
Hall, September 23, 1943 and that there was no at-
tempt by him or anyone else to conceal his identity.
R. 279.

Furthermore, the evidence does not show that ap-
pellant has the status of an employee or that the
State of Texas has the status of an employer within
the meaning of the National Labor Relations Act.

Respectfully submitted,

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